MOTION FILED
JAN 10 1986

No. 85-93

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

P.E. BAZEMORE, *et al.*,
Petitioners,

v.

WILLIAM C. FRIDAY, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MOTION FOR LEAVE TO FILE AND BRIEF AMICI CURIAE ON BEHALF OF NATIONAL COMMITTEE ON PAY EQUITY; AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW); AMERICAN CIVIL LIBERTIES U ON (ACLU); AMERICAN NURSES' ASSOCIATION (ANA); ASIAN PACIFIC AMERICAN BAR ASSOCIATION OF THE GREATER WASHINGTON, D.C. AREA; COALITION OF LABOR UNION WOMEN; COMPARABLE WORTH PROJECT; EQUAL RIGHTS ADVOCATES, INC.; FEDERALLY EMPLOYED WOMEN; LEAGUE OF WOMEN VOTERS EDUCATION FUND; MEXICAN AMERICAN WOMEN'S NATIONAL ASSOCIATION; 9 TO 5, THE NATIONAL ASSOCIATION OF WORKING WOMEN; NATIONAL FEDERATION OF FEDERAL EMPLOYEES; NOW LEGAL DEFENSE AND EDUCATION FUND (NOW LDEF); OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC; SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO; WOMEN EMPLOYED; WOMEN'S LEGAL DEFENSE FUND; YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF THE U.S.A., NATIONAL BOARD

[Counsel Listed on Inside Cover]

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

EDITH BARNETT
Counsel of Record
236 Massachusetts Ave., N.E.
Suite 602
Washington, D.C. 20002
(202) 544-0500

Of Counsel:

EILEEN STEIN
NIKKI HEIDEPRIM
WOMEN'S LEGAL DEFENSE FUND
2000 P Street, N.W.
Washington, D.C. 20036

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-93

P.E. BAZEMORE, *et al.*,
Petitioners,

v.

WILLIAM C. FRIDAY, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE ON BEHALF OF NATIONAL COMMITTEE ON PAY EQUITY; AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW); AMERICAN CIVIL LIBERTIES UNION (ACLU); AMERICAN NURSES' ASSOCIATION (ANA); ASIAN PACIFIC AMERICAN BAR ASSOCIATION OF THE GREATER WASHINGTON, D.C. AREA; COALITION OF LABOR UNION WOMEN; COMPARABLE WORTH PROJECT; EQUAL RIGHTS ADVOCATES, INC.; FEDERALLY EMPLOYED WOMEN; LEAGUE OF WOMEN VOTERS EDUCATION FUND; MEXICAN AMERICAN WOMEN'S NATIONAL ASSOCIATION; 9 TO 5, THE NATIONAL ASSOCIATION OF WORKING WOMEN; NATIONAL FEDERATION OF FEDERAL EMPLOYEES; NOW LEGAL DEFENSE AND EDUCATION FUND (NOW LDEF); OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC; SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO; WOMEN EMPLOYED; WOMEN'S LEGAL DEFENSE FUND; YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF THE U.S.A., NATIONAL BOARD

The National Committee on Pay Equity; American Association of University Women (AAUW); American Civil Liberties Union (ACLU); American Nurses' Association (ANA); Asian Pacific American Bar Association of the Greater Washington, D.C. Area; Coalition of Labor Union Women; Comparable Worth Project; Equal Rights Advocates, Inc.; Federally Employed Women; League of Women Voters Education Fund; Mexican American Women's National Association; 9 to 5, The National Association of Working Women; National Federation of Federal Employees; NOW Legal Defense and Education Fund (NOW LDEF); Office and Professional Employees International Union, AFL-CIO, CLC; Service Employees International Union, AFL-CIO; Women Employed; Women's Legal Defense Fund; Young Women's Christian Association of the U.S.A., National Board, move pursuant to Rule 36.3 of the rules of this Court, for leave to file the attached brief *amicus curiae* in support of the position of petitioners in this case. Consent to the filing of this brief has been declined by the respondents.

INTEREST OF AMICI CURIAE

The National Committee on Pay Equity is the only national coalition of labor, civil rights and women's organizations dedicated exclusively to eliminating wage discrimination and achieving equitable pay for all workers.* The Committee seeks to examine and educate the public on the causes and roots of pay inequities between men and women, and whites and people of color.

Amici curiae believe that blacks continue to encounter pervasive pay discrimination in the workplace, including,

---

* Statements describing each NCPE member organization which has signed on to the attached brief individually are set forth in the Appendix to the Brief.

as here, discrimination in pay for the *same* work as is performed by whites.** Equal pay for equal work, without regard to the sex or skin color of the worker, is a bedrock principle of workplace fairness. The legal requirements for proving illegal pay discrimination between workers on the same jobs are so well-established and widely agreed upon by the courts that *amici curiae* believed these issues finally resolved. The decision of the court below ignores or misinterprets long-established precedent in this Court and in the other courts of appeals, as well as in the fourth circuit itself. The result is to impose unprecedented and unwarranted requirements on plaintiffs asserting invidious race discrimination in pay by reason of unequal pay for equal work.

In the attached brief *amici curiae*, we argue that the courts below should have applied long-established precedent under the Equal Pay Act of 1963, 29 U.S.C. § 206 (d), to claims of racially discriminatory unequal pay for equal work in the case at bar. Such precedent requires the conclusion that the plaintiffs' evidence more than established a *prima facie* case of unlawful discrimination in pay; it also requires the conclusion that the employer's racially discriminatory pattern and practice of unequal pay for equal work is a continuing violation, not time-barred under this Court's holding in *United Airlines v. Evans*, 431 U.S. 533 (1977). We believe that this argu-

---

** White males earn more than black males throughout the work force, and within occupational categories as well. In 1982, black males employed full-time year round earned an average of only 72¢ for every $1.02 earned by white males employed full-time year round. In 1980, white male professional and technical workers earned an average of $10,000 more annually than black male professional and technical workers; white male craft workers earned an average of $3,400 more annually than black male craft workers. Source: Current Population Reports, Series P-60, U.S. Census Bureau.

ment is different from that presented by the parties, or, to our knowledge, by other *amici curiae*.

Respectfully submitted,

EDITH BARNETT
Counsel of Record
236 Massachusetts Ave., N.E.
Suite 602
Washington, D.C. 20002
(202) 544-0500

Of Counsel:
EILEEN STEIN
NIKKI HEIDEPRIM
WOMEN'S LEGAL DEFENSE FUND
2000 P Street, N.W.
Washington, D.C. 20036

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	4
ARGUMENT	6
I. THE COURT BELOW APPLIED AN ERRONEOUS STANDARD FOR THE ESTABLISHMENT OF A PRIMA FACIE CASE OF PAY DISCRIMINATION; UNDER APPLICABLE EQUAL PAY ACT PRECEDENTS, PLAINTIFFS' INITIAL BURDEN IS ONLY TO SHOW THAT THE WORK IS EQUAL AND THE PAY UNEQUAL	6
II. UNEQUAL PAY FOR EQUAL WORK IS A CONTINUING VIOLATION OF TITLE VII; EVERY PAY CHECK WHICH INCORPORATES A DISCRIMINATORY PAY DISPARITY IS A NEW AND SEPARATELY ACTIONABLE ACT OF DISCRIMINATION	12
CONCLUSION	17

TABLE OF AUTHORITIES

Cases: Page

Ammons v. Zia Co., 448 F.2d 117 (10th Cir. 1971) 7
Arkansas Educ. Assn. v. Board of Education, 446 F.2d 763 (8th Cir. 1971) 8
Bartelt v. Berlitz School, 698 F.2d 1003 (9th Cir. 1983) 13
Bazemore v. Friday, 751 F.2d 662 (4th Cir. 1984) .. 3, 4, 8, 9, 11
Berry v. Bd. of Supervisors, L.S.U., 715 F.2d 971 (5th Cir. 1983) 13
Boyd v. Madison County Mut. Ins. Co., 653 F.2d 1173 (7th Cir. 1981), *cert. den.*, 454 U.S. 1146 (1982) 13
Brennan v. Owensboro-Daviess County Hospital, 523 F.2d 1013 (6th Cir. 1975), *cert. den.*, 425 U.S. 973 (1976) 11
Brennan v. Victoria Bank & Trust Co., 493 F.2d 896 (5th Cir. 1974) 6
Briggs v. City of Madison, 536 F. Supp. 435 (W.D. Wisc. 1982) 9
Carmichael v. Birmingham Saw Works, 738 F.2d 1126 (11th Cir. 1984) 8, 15
Corbin v. Pan American World Airways, 432 F. Supp. 939 (N.D. Cal. 1977) 14
Corning Glass Works v. Brennan, 417 U.S. 188 (1974) 5, 6, 11, 14, 15
County of Washington v. Gunther, 452 U.S. 161 (1981) 7, 10
DiSalvo v. Chamber of Commerce, 568 F.2d 593 (8th Cir. 1978) 7
Dudley v. Textron, 386 F. Supp. 602 (E.D. Pa. 1975) 14
EEOC v. Central Kansas Med. Center, 705 F.2d 1270 (10th Cir. 1983) 11
EEOC v. Hickey-Mitchell Co., 372 F. Supp. 117 (E.D. Mo. 1973) 14
EEOC v. Inland Marine Industries, 729 F.2d 1229 (9th Cir. 1984) 8
EEOC v. McCarthy, 768 F.2d 1 (1st Cir. 1985) 12, 13

TABLE OF AUTHORITIES—Continued

	Page
EEOC v. Whitin Machine Works, 635 F.2d 1095 (4th Cir. 1980)	6, 10
Ende v. Bd. of Regents, 757 F.2d 176 (7th Cir. 1985)	7
Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978)	4-5, 9
Gunther v. County of Washington, 602 F.2d 882 (9th Cir. 1979), *aff'd sub nom. County of Washington v. Gunther*, 452 U.S. 161 (1981)	7
Hall v. Ledex, 669 F.2d 397 (6th Cir. 1982)	13
Handy v. New Orleans Hilton Hotel, 532 F. Supp. 68 (E.D. La. 1982)	7
Hays v. Potlatch Forests, Inc., 465 F.2d 1081 (8th Cir. 1972)	7
Hazelwood School District v. United States, 433 U.S. 299 (1977)	4, 14
Hodgson v. Behrens Drug Co., 475 F.2d 1041 (5th Cir. 1973)	16
Hodgson v. Brookhaven Gen. Hosp., 436 F.2d 719 (5th Cir. 1970)	7, 11
Hodgson v. Fairmont Supply Co., 454 F.2d 490 (4th Cir. 1972)	6
IUE v. Westinghouse, 631 F.2d 1094 (3d Cir. 1980), *cert. den.*, 452 U.S. 967 (1981)	14, 15
Jenkins v. Home Ins. Co., 635 F.2d 310 (4th Cir. 1980)	12, 13, 14
Kouba v. Allstate Ins. Co., 691 F.2d 873 (9th Cir. 1982)	7, 10, 11
Laffey v. Northwest Airlines, 567 F.2d 429 (D.C. Cir. 1976), *cert. den.*, 434 U.S. 1086 (1978)	6-7
Liberles v. County of Cook, 709 F.2d 1122 (7th Cir. 1983)	8
May Department Stores Co. v. Smith, 572 F.2d 1275 (8th Cir.), *cert. den.*, 439 U.S. 837 (1978)	16
McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973)	5, 8, 9, 10
Members v. City of Bridgeport, 646 F.2d 55 (2d Cir.), *cert. den.*, 454 U.S. 295 (1981)	8

TABLE OF AUTHORITIES—Continued

Page

Morris v. Williams, 149 F.2d 703 (8th Cir. 1945).. 8
Odomes v. Nucare, Inc., 653 F.2d 246 (6th Cir. 1981) 7, 11
Orr v. Frank R. MacNeill & Son, Inc., 511 F.2d 166 (5th Cir.), *cert. den.*, 423 U.S. 865 (1975).. 7
Patterson v. Western Development Labs, 13 Fair Empl. Prac. Cas. (BNA) 772 (N.D. Cal. 1976).. 8
Pittman v. Hattiesburg School Dist., 644 F.2d 1071 (5th Cir. 1981) 7, 9
Satz v. ITT Financial Corp., 619 F.2d 738 (8th Cir. 1980) 13
Shulte v. Wilson Industries, 547 F.Supp. 324 (S.D. Tex. 1982) 7, 10
Shultz v. American Can Co., 424 F.2d 356 (8th Cir. 1970) 11
Shultz v. Wheaton Glass Co., 421 F.2d 259 (3d Cir.), *cert. den.*, 398 U.S. 905 (1970) 7, 11
Strecker v. Grand Forks Cty. Soc. Serv. Bd., 640 F.2d 96 (8th Cir. 1980) 7
Teamsters v. United States, 431 U.S. 324 (1977).. 12
Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981) 4, 5, 8-9, 10, 14
Thompson v. Sawyer, 678 F.2d 257 (D.C. Cir. 1982) 11
United Airlines v. Evans, 431 U.S. 533 (1977).. 4, 5, 13, 14
Uviedo v. Steves Sash & Door Co., 738 F.2d 1425 (5th Cir. 1984) 8
Wade v. Miss. Coop. Extension Service, 528 F.2d 508 (5th Cir. 1976) 15
Washington v. Kroger, 506 F. Supp. 1158 (W.D. Mo. 1981) 8
Wells v. Hutchinson, 499 F. Supp. 174 (E.D. Tex. 1980) 14, 15
White v. City of Suffolk, 460 F. Supp. 516 (E.D. Va. 1978) 14
Williams v. Anderson, 562 F.2d 1081 (8th Cir. 1977) 8

TABLE OF AUTHORITIES—Continued

Page

Wright v. Mo. Dept. of Consumer Affairs, 512 F. Supp. 729 (E.D. Mo. 1981) 7-8

Statutes and Other Authorities:

Title VI, Civil Rights Act of 1964, 42 U.S.C. § 2000d 2
Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2000e ..... *passim*
Section 703(h), 42 U.S.C. § 2000e-2(h) 10
Equal Employment Opportunity Act of 1972, Pub. L. 92-261, § 2, 86 Stat. 103 16
The Equal Pay Act of 1963, 29 U.S.C. § 206(d) ..... *passim*
Civil Rights Act of 1866, 42 U.S.C. § 1981 8
Civil Rights Act of 1871, 42 U.S.C. § 1983 8
United States Constitution, Amend. XIV 2, 4, 8
29 C.F.R. § 800.14 10
S. Rep. No. 92-415, 92d Cong., 2d Sess. (1972), 118 Cong. Rec. 1070 (Jan. 25, 1972), reprinted in *Legislative History of Equal Employment Opportunity Act of 1972*, Sen. Comm. on Labor and Public Welfare, 896 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-93

P.E. BAZEMORE, *et al.*,

Petitioners,

v.

WILLIAM C. FRIDAY, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF AMICI CURIAE ON BEHALF OF NATIONAL COMMITTEE ON PAY EQUITY; AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW); AMERICAN CIVIL LIBERTIES UNION (ACLU); AMERICAN NURSES' ASSOCIATION (ANA); ASIAN PACIFIC AMERICAN BAR ASSOCIATION OF THE GREATER WASHINGTON, D.C. AREA; COALITION OF LABOR UNION WOMEN; COMPARABLE WORTH PROJECT; EQUAL RIGHTS ADVOCATES, INC.; FEDERALLY EMPLOYED WOMEN; LEAGUE OF WOMEN VOTERS EDUCATION FUND; MEXICAN AMERICAN WOMEN'S NATIONAL ASSOCIATION; 9 TO 5, THE NATIONAL ASSOCIATION OF WORKING WOMEN; NATIONAL FEDERATION OF FEDERAL EMPLOYEES; NOW LEGAL DEFENSE AND EDUCATION FUND (NOW LDEF); OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC; SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO; WOMEN EMPLOYED; WOMEN'S LEGAL DEFENSE FUND; YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF THE U.S.A., NATIONAL BOARD

This brief *amici curiae* is filed contingent on the granting of the foregoing motion for leave to file said brief. The interest of the *amici curiae* in this case is set forth in that motion.

STATEMENT OF THE CASE

This class action was commenced on November 18, 1971, in the United States District Court for the Eastern District of North Carolina, by black employees of the North Carolina Agricultural Extension Service (NCAES). The plaintiffs alleged racial discrimination, *inter alia*, in the payment of lower salaries to blacks than to whites for performance of the same work.[1] They alleged that this practice violated the Fourteenth Amendment to the United States Constitution, and Title VI and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d, 2000e. In 1972, the United States of America intervened as a plaintiff in the action, advancing essentially the same claims as the individual plaintiffs.

After a ten-week trial beginning in December, 1981, the district court, in decisions issued on August 29, 1982 and September 17, 1982, dismissed all of the plaintiffs' claims. On appeal a divided panel, with Judge Phillips dissenting, affirmed the decision of the district court. Following the filing of a timely petition for rehearing, together with a suggestion for rehearing *en banc*, the court of appeals divided evenly on the petition, resulting in the denial of rehearing *en banc*.

The rulings of the courts below which *amici curiae* herein specifically address are the following:

1. The plaintiffs offered several types of evidence of racially motivated pay discrimination. This evidence included a statistical presentation of a pattern of pay dif-

---

[1] *Amici curiae* herein treat only petitioners' pay discrimination claims.

ferentials disfavoring black NCAES employees performing the same work as whites, supplemented by multiple regression analyses which demonstrated statistically significant underpayment to blacks performing the same work as whites with the same education and seniority; and numerous specific examples of disparate pay between white and black professionals, with comparable levels of seniority and education, holding the same job positions in the same county offices at the same time. The courts below rejected this evidence as insufficient to make out even a *prima facie* case of racially motivated pay discrimination on either a pattern and practice or an individual basis.

The courts below held that, in the pattern and practice aspect of the case, the plaintiffs had failed to make a *prima facie* case because their multiple regression analyses (like that of the defendants', which used a similar methodology and reached similar conclusions) did not include a number of factors which might possibly explain the pay disparities. They also held that the plaintiffs had failed to make out a *prima facie* case of individual disparate treatment because they had not shown that their job qualifications and job performance "qualified" them for the higher pay. (751 F.2d at 670, 672). Judge Phillips dissented, arguing that "[i]t is hard to imagine more weighty evidence of knowing, intentional continuation of acknowledged discriminatory policies." (751 F.2d at 692-693).

2. Both the district court and the court of appeals concluded that, despite the merger of separate pre-1965 salary scales for blacks and whites, the pre-1965 pay differentials remained in effect, thus resulting in a continuing pattern of lower pay to currently employed blacks hired before 1965 than to white colleagues holding the same positions. (751 F.2d at 670-672). Indeed, NCAES officials were themselves fully aware of the continuing nature of this discrimination, as revealed by an official

internal memorandum, which conceded that the salaries for non-white men were lower. (751 F.2d at 690-691). Nevertheless, both courts held that the continued use of such differentials violated neither Title VII nor the Fourteenth Amendment. Judge Phillips dissented, declaring that the cases on which the majority relied, *Hazelwood School District v. United States*, 433 U.S. 299 (1977) and *United Airlines v. Evans*, 431 U.S. 533 (1977), do not allow employers to continue practices that now violate Title VII because at one time they did not. (751 F.2d at 670, 696).

SUMMARY OF ARGUMENT

I.

Where, as here, black Title VII plaintiffs are performing the same work as whites for lower pay, the well-established body of precedent developed under the Equal Pay Act of 1963, 29 U.S.C. § 206(d), should apply. The Equal Pay Act of 1963 bans lower pay to women working on the same jobs as men, unless the pay differential is based on a factor other than sex. Title VII bans discrimination in pay on the basis of, *inter alia*, race or sex. Because of the close relationship between the Equal Pay Act and Title VII, and the long-acknowledged need to interpret the two statutes consistently, the courts have traditionally looked to Equal Pay Act precedent to resolve pay discrimination issues under Title VII, on behalf of blacks as well as women.

This Court has said time and again that the burden of establishing a *prima facie* case of disparate treatment is not difficult; a Title VII plaintiff is required only to show "actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were 'based on a discriminatory criterion illegal under the Act.'" *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981), quoting *Furnco Constr. Corp. v. Waters*, 438

U.S. 567, 576 (1978). Moreover, the test set forth for establishing a *prima facie* case in *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), is not an inflexible rule. *McDonnell-Douglas*, 411 U.S. at 802 & n.13; *Burdine*, 450 U.S. at 253 & n.6.

Under the Equal Pay Act (and under Title VII, where sex discrimination is alleged by reason of unequal pay for equal work), plaintiffs establish a *prima facie* case by showing that the work is equal and the pay is unequal. *Corning Glass Works v. Brennan*, 417 U.S. 188, 195-196 (1974). Plaintiffs are not required to make any other showing, such as that they are "qualified" to receive the higher pay, or to negative all the possible arguably legitimate factors which might account for the pay differentials. Virtually all of the courts of appeals, including the fourth circuit, have so held. The lower court's mechanistic application of the *McDonnell-Douglas* formula was clearly inappropriate, and contrary to well-established precedent. There can be no principled justification for imposing more onerous requirements on black plaintiffs than on women plaintiffs complaining of unequal pay for equal work, as did the court below.

II.

Under the Equal Pay Act, present pay disparities between men and women working in the same jobs are actionable, regardless of the date of the original decision to incorporate such discrimination into an employer's salary structure. Pay discrimination has always been considered a continuing violation, newly actionable with each new paycheck incorporating a discriminatory pay differential. Again, virtually all of the circuit courts, including the fourth circuit, have so held. Contrary to the lower courts' conclusion herein, *United Airlines v. Evans* is inapplicable; it applies only to single past acts of discrimination with present effect, rather than to presently continuing acts of discrimination of the type alleged by plaintiffs here.

ARGUMENT

I. THE COURT BELOW APPLIED AN ERRONEOUS STANDARD FOR THE ESTABLISHMENT OF A PRIMA FACIE CASE OF PAY DISCRIMINATION; UNDER APPLICABLE EQUAL PAY ACT PRECEDENTS, PLAINTIFF'S INITIAL BURDEN IS ONLY TO SHOW THAT THE WORK IS EQUAL AND THE PAY UNEQUAL.

In a sex-based unequal pay for equal work claim brought under the Equal Pay Act, the plaintiff's initial burden of proof is to show that the work is equal and the pay is unequal. *Corning Glass Works v. Brennan, supra*, 417 U.S. at 195-196; *EEOC v. Whitin Machine Works*, 635 F.2d 1095, 1097 (4th Cir. 1980); *Hodgson v. Fairmont Supply Co.*, 454 F.2d 490, 493 (4th Cir. 1972). The same standards should be applied to the instant race-based claims of unequal pay for equal work. Where, as here, the identical positions are at issue,[2] and plaintiffs have shown racially significant pay disparities through multiple regression analyses, through showings of average pay discrepancies for groups of blacks in the same positions, and through one-on-one comparisons of white and black professionals in the same positions with comparable levels of seniority and education, the courts below were plainly wrong in refusing even to find that plaintiffs had established a *prima facie* case of racial discrimination in pay.

Although the Equal Pay Act is not as far-reaching as Title VII, both statutes serve the same fundamental purpose of remedying discrimination in compensation.[3] The

---

[2] Where the positions under comparison are the same, they are equal within the meaning of the Equal Pay Act. See *Brennan v. Victoria Bank & Trust Co.*, 493 F.2d 896, 900 (5th Cir. 1974).

[3] Female equal pay for equal work plaintiffs are not restricted to suing under the Equal Pay Act; they may file under both the Equal Pay Act and Title VII, or only under Title VII, if they so choose. See, e.g., *Laffey v. Northwest Airlines*, 567 F.2d 429, 445 (D.C. Cir.

two must therefore be construed in *pari materia*, and neither should be interpreted in a fashion that would undermine the other.[4] Because of the close relationship between the Equal Pay Act and Title VII, the lower courts have uniformly looked for guidance to decisions interpreting the Equal Pay Act, and have applied Equal Pay Act standards on burdens of proof in deciding sex-based equal pay claims asserted under Title VII.[5]

Numerous lower courts have also applied Equal Pay Act standards for establishing a *prima facie* case in race-based pay discrimination claims asserted under Title VII, finding no reason to distinguish between the legal standards applicable to sex-based and race-based equal pay for equal work claims.[6] Other courts, while not refer-

---

1976), *cert. den.*, 434 U.S. 1086 (1978) (equal pay claim brought under both Title VII and the Equal Pay Act); *County of Washington v. Gunther*, 452 U.S. 161, 165 & n.3 (1981); *Kouba v. Allstate Ins. Co.*, 691 F.2d 873, 875 & n.3 (9th Cir. 1982) (equal pay claims brought solely under Title VII).

[4] *Ende v. Bd. of Regents*, 757 F.2d 176, 183 (7th Cir. 1985); *Gunther v. County of Washington*, 602 F.2d 882, 891 & n.10 (9th Cir. 1979), *aff'd*, 452 U.S. 161 (1981); *DiSalvo v. Chamber of Commerce*, 568 F.2d 593, 596 (8th Cir. 1978); *Laffey v. Northwest Airlines, supra*, 567 F.2d at 446; *Orr v. Frank R. MacNeill & Son, Inc.*, 511 F.2d 166, 170-171 (5th Cir.), *cert. den.*, 423 U.S. 865 (1975); *Hays v. Potlach Forests, Inc.*, 465 F.2d 1081, 1083 (8th Cir. 1972); *Ammons v. Zia Co.*, 448 F.2d 117, 119 (10th Cir. 1971); *Shultz v. Wheaton Glass Co.*, 421 F.2d 259, 266 (3d Cir.), *cert. den.*, 398 U.S. 905 (1970); *Hodgson v. Brookhaven Gen. Hosp.*, 436 F.2d 719, 727 (5th Cir. 1970); *Schulte v. Wilson Industries*, 547 F.Supp. 324, 337 (S.D. Tex. 1982).

[5] See, e.g., *Kouba v. Allstate Insurance Co., supra*, 691 F.2d at 875; *Odomes v. Nucare, Inc.*, 653 F.2d 246, 250 (6th Cir. 1981); *Strecker v. Grand Forks Cty. Soc. Serv. Bd.*, 640 F.2d 96, 99 (8th Cir. 1980); *Orr v. Frank R. MacNeill & Son, Inc., supra*, 511 F.2d at 171; *Ammons v. Zia Co., supra*, 448 F.2d at 119.

[6] See e.g., *Pittman v. Hattiesburg School Dist.*, 644 F.2d 1071, 1074 (5th Cir. 1981); *Handy v. New Orleans Hilton Hotel*, 532 F.Supp. 68, 71-72 (E.D. La. 1982); *Wright v. Mo. Dept. of Con-*

ring specifically to Equal Pay Act precedent, have nevertheless required the same showing to establish a *prima facie* case under Title VII of racially discriminatory unequal pay for equal work—i.e., that the work is equal or the same, but the pay is lower.[7] These decisions are consistent with the many cases holding that racially based unequal pay for equal work violates not only Title VII, but also other civil rights statutes and where, as here, the employer is a unit of state or local government, the Fourteenth Amendment to the United States Constitution as well.[8]

The lower court's ruling (751 F.2d at 670) that the plaintiffs had to show more than equality of work and inequality of pay is based on a faulty reading of *McDonnell-Douglas v. Green, supra,* and *Texas Department*

---

sumer Affairs, 512 F.Supp. 729, 736-737 (E.D. Mo. 1981); *Patterson v. Western Development Labs,* 13 Fair Empl. Prac. Cas. (BNA), 772, 776 (N.D. Cal. 1976).

[7] See *Carmichael v. Birmingham Saw Works,* 738 F.2d 1126, 1136 (11th Cir. 1984); *Liberles v. County of Cook,* 709 F.2d 1122, 1128-1129 (7th Cir. 1983); *Members v. City of Bridgeport,* 646 F.2d 55, 60-61 (2d Cir.), *cert. den.,* 454 U.S. 295 (1981); *Washington v. Kroger,* 506 F.Supp. 1158, 1170 (W.D. Mo. 1981); cf. *Uviedo v. Steves Sash & Door Co.,* 738 F.2d 1425, 1431 (5th Cir. 1984) (same showing required to establish *prima facie* case of national origin discrimination in pay.)

[8] See e.g., *EEOC v. Inland Marine Industries,* 729 F.2d 1229, 1233, n.7, 1234 (9th Cir. 1984) (showing that no black ever earned more than a white for the same work establishes *prima facie* case of intentional discrimination under 42 U.S.C. § 1981 as well as Title VII); *Williams v. Anderson,* 562 F.2d 1081, 1089-1091 (8th Cir. 1977) (systematic payment of lower salaries to blacks than to whites in similar positions establishes *prima facie* case of intentional discrimination under 42 U.S.C. § 1983); *Arkansas Educ. Assn. v. Board of Education,* 446 F.2d 763, 770 (8th Cir. 1971), quoting *Morris v. Williams,* 149 F.2d 703, 708-709 (8th Cir. 1945) (systematic practice of paying black teachers substantially less than white teachers for comparable services violates the Fourteenth Amendment.)

of Community Affairs v. Burdine, supra. Contrary to the lower court's view, those cases did not establish that "plaintiffs [in an unequal pay for equal work case] must show that they were qualified to be receiving a higher salary in order to shift the burden of production to the employer." 751 F.2d at 670. This Court has repeatedly stated that the *McDonnell-Douglas* formula is only one possible method for establishing a *prima facie* case. *McDonnell-Douglas*, 411 U.S. at 802 & n.13; *Burdine*, 450 U.S. at 253 & n.6.

In *Burdine*, the Court stressed that an important function of the *prima facie* case is to eliminate the most common non-discriminatory reasons for the employer's apparently unequal treatment of the plaintiff. 450 U.S. at 253-254; see also *Furnco Constr. Corp. v. Waters*, *supra*, 438 U.S. at 577. Requiring a showing that the plaintiff is qualified to perform the work makes sense in a refusal-to-hire case such as *McDonnell-Douglas*, because a lack of qualifications is one of the most common non-discriminatory reasons for rejecting an applicant for a vacant position. It does not make sense in an equal pay for equal work case, as presented here, because there is no question that the plaintiffs are qualified to perform the same work as their white counterparts; they are already performing it.

On the other hand, the most common reason that an employer pays different wages to a black and white employee or a male and a female employee is that they perform different work. See *Briggs v. City of Madison*, 536 F.Supp. 435, 444 (W.D. Wisc. 1982). A showing of performance of the same work, along with unequal pay, thus serves to raise an inference of discrimination "because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible facts." *Furnco*, 438 U.S. at 577; see also *Pittman v. Hattiesburg School Dist.*, *supra*, 644 F.2d at 1074 (5th Cir. 1981).

The additional test imposed by the court below—"lack of qualification to be receiving a higher salary"—is unworkably vague as well as contrary to the great weight of precedent. Numerous reasons not within a plaintiff's knowledge may account for his "lack of qualification" to receive the same pay as his white counterpart performing the same work. For example, he may not be "qualified" for higher pay because of the employer's application of a bona fide seniority system, a merit system, or a system which measures earnings by quantity or quality of production.[9] Like the applicant who is not in a position to know why he was rejected for employment, the wage discrimination plaintiff, if required to prove the absence of each such factor other than race, faces an impossibly onerous burden. See *Burdine*, 450 U.S. at 253. It is for exactly this reason that *McDonnell-Douglas* shifted the burden of specifying the applicable factors to the employer.

In recognition of the employer's vastly greater access to business decisions on pay, the court have long held that, under the Equal Pay Act, the burden of proof shifts to the employer after a showing of sex-based unequal pay for equal work "since the acts underlying the wage differential are usually within his unique knowledge." *EEOC v. Whitin Machine Works, supra*, 635 F.2d at 1097, 1098 (4th Cir. 1980); Secretary of Labor's Interpretative Bulletin on Equal Pay for Equal Work, 29 C.F.R. 800.14 ("The facts necessary to establish that a wage differential has a basis specified in any of the

---

[9] These factors are specific exemptions listed in Sec. 703(h) of Title VII. They are also affirmative defenses under the Equal Pay Act which have been absorbed into Title VII by virtue of the Bennett amendment, on which the employer has the burden of proof. See *County of Washington v. Gunther, supra*, 452 U.S. at 169-171; *Kouba v. Allstate Ins. Co., supra*, 691 F.2d at 875; *Schulte v. Wilson Industries, Inc., supra*, 547 F.Supp. at 339-340.

[Equal Pay Act] exceptions are peculiarly within the knowledge of the employer.")[10]

The requirement that the employer come forward with an explanation for a sex-based wage differential between employees performing equal work is equally appropriate in race-based equal pay for equal work cases. Not only is it consistent with prior precedent in sex-based equal pay for equal work cases brought under the Equal Pay Act and Title VII, but it is also fair. The allocation of the burden of proof in an employment discrimination case ought not to be a game. An employer ought to be required to produce evidence of those lawful factors which *in fact* explain wage differentials between employees performing the same work in his workplace; he ought not to be able to sabotage a plaintiff's *prima facie* case by mere speculation on the many possible factors which *might* be relevant to salary differentials, whether or not he actually uses them.[11]

Nevertheless, that is precisely what the lower court allowed, by its facile dismissal of the plaintiffs' statistical multiple regression analysis evidence for not including "all measurable variables *thought* to have an effect on salary level." (emphasis added). It did so despite the

---

[10] See also *Corning Glass Works v. Brennan, supra,* 417 U.S. at 196; *EEOC v. Central Kansas Med. Center,* 705 F.2d 1270, 1272 (10th Cir. 1983); *Thompson v. Sawyer,* 678 F.2d 257, 271 (D.C. Cir. 1982); *Kouba v. Allstate Ins. Co., supra,* 691 F.2d at 875; *Odomes v. Nucare Inc., supra,* 653 F.2d at 251, *Brennan v. Owensboro-Daviess County Hospital,* 523 F.2d 1013, 1030-31 (6th Cir. 1975), *cert. den.,* 425 U.S. 973 (1976); *Hodgson v. Brookhaven Gen. Hosp., supra,* 436 F.2d at 722; *Shultz v. American Can Co.,* 424 F.2d 356, 362 (8th Cir. 1970); *Shultz v. Wheaton Glass Co., supra,* 421 F.2d at 266.

[11] As Judge Phillips points out in his dissent below: "[I]t will always be possible for Title VII defendants to hypothesize yet another variable that might theoretically reduce a race effect coefficient demonstrated by any multiple regression analysis that could be conceived." 751 F.2d at 692-3.

fact that the plaintiffs' statistical evidence, even apart from the many specific examples adduced, showed more than ought to be required for the *prima facie* case—a statistically significant racial impact on salary when not only the job titles, i.e., the work performed, but also education and seniority are held equal. By their statistical evidence alone, the plaintiffs clearly met their burden to establish that a pattern or practice of racially discriminatory unequal pay for equal work existed as a matter of the employer's regular and standard operating procedure. See *Teamsters v. United States*, 431 U.S. 324, 336 (1977); see also e.g., *EEOC v. McCarthy*, 768 F.2d 1 (1st Cir. 1985) (in successful action brought by women faculty under the Equal Pay Act, court gives great weight to multiple regression analysis showing larger salary increases to male faculty members with equal rank, experience, education and seniority).

II. UNEQUAL PAY FOR EQUAL WORK IS A CONTINUING VIOLATION OF TITLE VII; EVERY PAY CHECK WHICH INCORPORATES A DISCRIMINATORY PAY DISPARITY IS A NEW AND SEPARATELY ACTIONABLE ACT OF DISCRIMINATION.

The decision below flatly contradicts prior precedent in the fourth circuit, as well as in other courts of appeals which have all agreed that unequal pay for equal work is a continuing violation. Every paycheck which incorporates a discriminatory pay differential is a new act of discrimination.

In *Jenkins v. Home Ins. Co.*, 635 F.2d 310 (4th Cir. 1980), the fourth circuit held, *per curiam*, that an unequal pay for equal work claim brought by a female Claims Supervisor constituted a continuing violation of both the Equal Pay Act and Title VII. The court reversed summary judgment for the defendant, holding that the lower court had erroneously applied the rule

of *United Air Lines, Inc. v. Evans, supra.* It distinguished *Evans* on grounds equally applicable here—that only one actionable violation had occurred in *Evans*, whereas, in the unequal pay for equal work claim, the company's violation was a continuing one. As the court said:

> unlike *Evans*, the Company's alleged discriminatory violation occurred in a series of separate but related acts throughout the course of Jenkins' employment. Every two weeks, Jenkins was paid for the prior working period; an amount less than was paid her male counterparts for the same work covering the same period. Thus, the Company's alleged discrimination was manifested in a continuing violation which ceased only at the end of Jenkins' employment.

635 F.2d at 312. All of the other courts of appeals which have considered the issue have also held that an equal pay violation occurs not only at the time the employer sets the pay levels, but on every pay day for as long as the discriminatory pay differential continues.[12]

The court in *Jenkins*, pointing to prior fourth circuit decisions that acts of racial discrimination first inflicted at the date of hiring can thereafter continually violate plaintiffs' rights, declared that it viewed the continuing violation issue to be the same in sex cases as in race cases and that it would apply the same rule, "regardless of the type of discrimination alleged." *Id.*

---

[12] *EEOC v. McCarthy, supra,* 768 F.2d at 3-4 (1st Cir. 1985) (Equal Pay Act); *Bartelt v. Berlitz School,* 698 F.2d 1003, 1004-1005 (9th Cir. 1983) (Title VII); *Berry v. Bd. of Supervisors, L.S.U.,* 715 F.2d 971, 980-981 & n.14 (5th Cir. 1983) (Equal Pay Act & Title VII); *Hall v. Ledex, Inc.,* 669 F.2d 397, 398 (6th Cir. 1982) (Equal Pay Act & Title VII); *Satz v. ITT Financial Corp.,* 619 F.2d 738, 743-44 (8th Cir. 1980) (Title VII). Cf. *Boyd v. Madison County Mut. Ins. Co.,* 653 F.2d 1172, 1176-1177 (7th Cir. 1981), *cert. den.,* 454 U.S. 1146 (1982) (payment of attendance bonuses to women employees but not to men constituted continuing violation).

Numerous lower courts have also held that race-based unequal pay for equal work establishes a continuing violation of Title VII.[13]

In view of its prior pronouncement in *Jenkins*, and the wealth of precedent to the contrary, the lower court's application of *United Airlines v. Evans* to bar race-based unequal pay for equal work claims is inexplicable. Continuing pay discrimination is not "merely an unfortunate event in history. . . ." On the contrary, it is one with "present legal consequences." (*Evans*, 431 U.S. at 558).[14] On every pay day, the employer pays lower wages to a black than to a white for the same work. Each such act, if left unexplained, establishes a "legally mandatory inference of discrimination. . . ." *Texas Department of Community Affairs v. Burdine*, *supra*, 450 U.S. at 254-255 & n.10; see discussion in Part I above.[15]

---

[13] See, e.g., *Wells v. Hutchinson*, 499 F.Supp. 174, 186-187 (E.D. Tex. 1980); *White v. City of Suffolk*, 460 F.Supp. 516, 519-520 (E.D. Va. 1978); *Corbin v. Pan American World Airways*, 432 F.Supp. 939, 944 (N.D. Cal. 1977); *Dudley v. Textron*, 386 F.Supp. 602, 604 (E.D. Pa. 1975); *EEOC v. Hickey-Mitchell Co.*, 372 F.Supp. 1117, 1120 (E.D. Mo. 1973).

[14] *Evans*, like *Hazelwood* and the other cases relied on by the court below involved discrete acts such as discharge and hiring, which occur and are completed at a single point in time. If they happened pre-Act, they were legal; if they happened post-Act, they were illegal, but subject to a time limitation for action under Title VII. In contrast, wage discrimination is an ongoing process which, even if initiated pre-Act, became illegal post-Act if continued without correction. See *Corning Glass Works v. Brennan*, *supra*, 417 U.S. at 205-210 (pre-Equal Pay Act pay differential in favor of men performing equal work to women became illegal after the Act's enactment and was not cured by permitting women to bid for the higher paying job); cf. *IUE v. Westinghouse*, 631 F.2d 1094 (3d Cir. 1980), *cert. den.*, 452 U.S. 967 (1981) (allegation of present sex discrimination in pay derived from an openly sex discriminatory wage structure established by the employer in the late 1930s states an actionable claim under Title VII.)

[15] Moreover, the fact that a defendant has a practice of hiring black employees at an initially discriminatory wage creates an

A contrary holding would immunize from Title VII liability all employers which, as here, installed their current salary systems before its effective date.[16] It cannot be assumed that employers no longer utilize salary systems with discriminatory pre-Title VII origins. Many employers, like the employer here, made only cosmetic changes in discriminatory salary systems after the effective date of Title VII.[17] Congress can not have intended to reward violators of the law by immunizing discriminatory salary systems that are still in effect years

---

inference that all successive wage disparities are the product of unlawful discrimination. *Carmichael v. Birmingham Saw Works, supra*, 738 F.2d at 1136 (11th Cir. 1984). See also *Wells v. Hutchinson, supra*, 499 F.Supp. at 196 (E.D. Tex. 1980) (where salaries were initially established at discriminatory levels, percentage increases exacerbated the existing salary disparities, and were themselves discriminatory, because white employees always received more than black plaintiff who held the same job.)

[16] It also presents a classic Catch-22 situation. A black employee who, like many in the instant case, was hired before the effective date of Title VII, had no remedy against pay discrimination at the time he was hired. Under the lower court's holding, he still has no remedy for his lower pay even *after* the enactment of Title VII, because he had failed to take action within 180 days of being hired —although he had no action that he could have taken.

[17] See, for example, *IUE v. Westinghouse, supra*, 631 F.2d at 1097-1098 (plaintiffs alleged that, in 1965, company combined previously male and female jobs into one labor grade scale, but assigned female jobs to lowest labor grades, thus perpetuating prior discriminatorily low pay existing since the 1930s); *Wade v. Miss. Coop. Extension Service*, 528 F.2d 508, 512-513 (5th Cir. 1976) (after 1965, Mississippi Cooperative Extension Service merged previously white and black offices, but prior racially discriminatory pay differentials between black and white employees continued); *Wells v. Hutchinson, supra*, 499 F.Supp. at 183-184 (E.D. Tex. 1980) (same situation with respect to Texas Agricultural Extension Service); cf. *Corning Glass Works v. Brennan, supra*, 417 U.S. at 205-206 (after 1966, company allowed females to bid for previously all-male night inspection jobs, but did not eliminate discriminatory wage differentials which had existed since the 1920s.)

after the enactment of Title VII, merely because they have until recently escaped attention.[18] To paraphrase a lower court decision that sex-based, discriminatory wage payments constitute a continuing violation of the Equal Pay Act, "to hold otherwise would permit perpetual wage discrimination by an employer whose violation . . . had already lasted [for years] without attack . . ." *Hodgson v. Behrens Drug Co.*, 475 F.2d 1041 (5th Cir. 1973).

---

[18] Because the plaintiffs in this case were included in Title VII coverage only after the 1972 amendments to the Act (Equal Employment Opportunity Act of 1972, Pub. L. 92-261, § 2, 86 Stat. 103), the 1972 legislative history is directly and particularly relevant to this case. *May Department Stores Co. v. Smith*, 572 F.2d 1275 (8th Cir.), *cert. den.*, 439 U.S. 837 (1978). By 1972, Congress had concluded that state and local governments, such as the defendants here, "have failed to fulfill their obligation to assure equal job opportunity . . . . Not only do [they] consciously and overtly discriminate in hiring and promoting minority group members, but they do not foster positive programs to deal with discriminatory treatment on the job. . . . [T]he existence of discrimination is perpetuated by both institutional and overt discriminatory practices, and . . . past discriminatory practices are maintained through *de facto* segregated job ladders, invalid selection techniques, and stereotypical misconceptions by supervisors regarding minority group capabilities." S. Rep. No. 92-415, 92nd Cong., 2d Sess. (1972), 118 Cong. Rec. 1070 (Jan. 25, 1972), reprinted in *Legislative History of Equal Employment Opportunity Act of 1972*, Subcomm. on Labor of Sen. Comm. on Labor and Public Welfare, 896.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

EDITH BARNETT
Counsel of Record
236 Massachusetts Ave., N.E.
Suite 602
Washington, D.C. 20002
(202) 544-0500

Of Counsel:
EILEEN STEIN
NIKKI HEIDEPRIM
WOMEN'S LEGAL DEFENSE FUND
2000 P Street, N.W.
Washington, D.C. 20036

APPENDIX

STATEMENTS OF INTEREST OF *AMICI CURIAE*

1. The *American Association of University Women (AAUW)*, founded in 1881, is a private, non-profit women's organization with more than 193,000 members nationwide. It has lobbied on public policy issues since 1898. AAUW promotes equity for women, education and self-development over the life span, and positive societal change.

2. The *American Civil Liberties Union (ACLU)* is a nationwide, non-partisan organization of over 250,000 members dedicated to protecting fundamental rights, including the right to equal treatment under the law. The ACLU has established the Women's Rights Project to help eliminate the pervasive problem of gender-based discrimination. It has participated, both directly and as *amicus curiae*, in the litigation of many cases before the Supreme Court and other courts challenging sex discriminatory practices, including cases such as *County of Washington v. Gunther*, 452 U.S. 967 (1981), involving interpretation and enforcement of Title VII of the Civil Rights Act of 1964, as amended.

3. The *American Nurses' Association (ANA)* represents the nation's 1.7 million registered nurses, the nation's largest group of health care professionals. Nursing is one of the most sex-segregated job classifications in this country. It is 97% female and has a labor force participation rate of 77%.

For more than fifty (50) years, ANA has sought to end sex and race discrimination in employment, particularly sex- and race-based discrimination in wage setting. ANA is currently the lead plaintiff-appellant in *American Nurses' Association, et al. v. State of Illinois, et al.*, a case currently on appeal from the United States District Court, Northern District of Illinois, Eastern Divi-

sion, which is being brought under Title VII on the issue of sex-based wage discrimination.

ANA has a strong interest in the outcome of the Court's decision in this and other cases which seek the elimination of sex- and race-based discrimination.

4. The *Asian Pacific American Bar Association of the Greater Washington, D.C. Area* is composed of attorneys who are committed to addressing legal and social issues concerning the Asian Pacific Community, as well as issues affecting other racial minorities, women, the disabled and other groups which have been historically excluded from the legal and political process.

5. The *Coalition of Labor Union Women (CLUW)* was founded in 1974 to advance the interests of women union members with respect to various employment related matters. CLUW is composed of over 18,000 members representing 59 labor unions. Through its educational and advocacy activities, CLUW has addressed the numerous problems of women in the workforce and has sought an end to sex-based employment inequities.

6. The *Comparable Worth Project* is a non-profit organization established in 1980 in Oakland, California, which supports and generates workplace, government and community activities on the issue of pay equity for women's occupations. It provides research, education, training and technical assistance for workers, unions, employers, lawyers, legislators, grassroots organizations and others.

7. *Equal Rights Advocates, Inc. (ERA)* is a San Francisco-based public interest legal and educational corporation specializing in the area of sex discrimination. The organization has a long history of interest, activism, and advocacy in all areas of the law which affect equality between the sexes. A major focus of the work of ERA, Inc. has been in the area of gender equality in the workplace because economic equality is fundamental to women's ability to achieve equality in other spheres of so-

ciety. In particular, ERA, Inc. is committed to eliminating all forms of sex-based wage discrimination. Staff attorneys represented the plaintiffs in *Kouba v. Allstate Insurance Company*, 691 F.2d 872 (9th Cir. 1982), and ERA has participated as *amicus curiae* in *Hein v. Oregon College of Education*, No. 82-3491 (9th Cir. 1983). In addition, the organization has represented plaintiffs in state and federal courts. It also has participated as *amicus curiae* in numerous other cases.

8. *Federally Employed Women, Inc.* is an international nonprofit membership organization which represents the concerns of the over 800,000 women employed by the federal government. F.E.W. was founded in 1968 for the purposes of erasing sex discrimination and increasing job opportunities in the federal workplace.

9. The *League of Women Voters Education Fund (LWVEF)* is a non-partisan, non-profit educational organization, one of whose purposes is to increase public understanding of major public policy issues. The LWVEF undertakes research, writes publications, monitors and litigates on current issues such as employment discrimination. The LWVEF seeks the eradication of any form of discrimination that results in the underpayment of work performed by minorities and women.

10. The *Mexican American Women's National Association (MAWNA)* was organized in 1974 to provide a national voice for Mexican American women of varied political, educational, professional and geographic backgrounds. MAWNA works for the advancement of Mexican American women by promoting leadership development and increasing a national awareness about their presence and concerns.

11. *9 to 5, The National Association of Working Women* is a membership organization of women office workers which seeks to improve working conditions across the country. Major areas of concern include pay and pay equity, safe automation of offices, elimination of dis-

crimination by race, sex and age, and recognition of rights and respect for working women.

12. The *National Federation of Federal Employees (NFFE)* is a labor organization which represents approximately 150,000 federal employees throughout the country pursuant to Title VII of the Civil Service Reform Act, Pub. Law 95-454, 5 USC § 7101 *et seq.* NFFE is composed of more than 450 affiliated locals which represent employees in federal agencies throughout the government. NFFE represents employees whose positions are classified under both the General Schedule and the Wage Grade systems. NFFE has a mandate from its members to work for pay equity between men's and women's jobs and to challenge the discriminatory wage practices that exist under the current job classification system used by the federal government.

13. The *NOW Legal Defense and Education Fund (NOW LDEF)* is a non-profit civil rights organization that performs a broad range of legal and educational services nationally in support of women's efforts to eliminate sex-based discrimination and secure equal rights. NOW LDEF was established in 1970 by leaders of the National Organization for Women. A major goal of the NOW LDEF is eliminating barriers that deny women economic opportunities. In furtherance of that goal, NOW LDEF has participated in numerous cases to secure full enforcement of laws prohibiting employment discrimination, including participation as an *amicus* in *County of Washington v. Gunther*, 452 U.S. 161 (1981) before this Court.

14. *Office & Professional Employees International Union, AFL-CIO (OPEIU)*, in representing white Collar workers in the United States, has fought for the rights and interests of women and minorities for over forty years. In Congress and in the courts, OPEIU has sought to eliminate discrimination on all fronts, including wage discrimination. Support of this *amicus curiae* brief is yet another of OPIEU's efforts in this struggle, although

non-discriminatory pay is more than a women's or minority issue; it is an issue for all working people.

15. The *Service Employees International Union (SEIU)* represents 850,000 workers in the U.S. and Canada. Our workers work primarily in the service sector. Most of our members work in jobs that suffer from historic pay discrimination. SEIU is committed to eliminating discrimination in pay, hiring, and promotion against women and minorities.

16. *Women Employed* is a Chicago-based organization with a membership of 3,000 women workers. Over the past nine years, the organization has assisted working women with problems of sex discrimination. Women Employed also monitors the enforcement, actions and policies of the EEOC and Office of Federal Contract Compliance Programs with regard to a broad range of sex discrimination issues.

17. The *Women's Legal Defense Fund* is a non-profit, tax exempt membership organization, founded in 1971 to provide *pro bono* legal assistance to women who have been discriminated against on the basis of sex. The Fund devotes a major portion of its resources to combatting sex discrimination in employment, through litigation of significant employment discrimination cases, operation of an employment discrimination counselling program, public education, and agency advocacy before the EEOC and other federal agencies that are charged with enforcement of equal opportunity laws.

18. The *Young Women's Christian Association of the USA, National Board*, is elected by the triennial national convention of the YWCA to make policy decisions and carry out convention mandates between conventions. The YWCA is the world's oldest and largest women's autonomous membership movement, and is active in more than 80 countries world-wide. One of the chief priorities of the National Board is the realization of the principle of equal pay for work of comparable value.